

RESOLUTION NO. 2016 - 023

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF SOUTHWEST RANCHES, FLORIDA AMENDING RESOLUTION NOS. 2012-052; 2014-023; AND 2015-021; APPROVING THE THIRD MODIFICATION TO THE AGREEMENT BETWEEN THE TOWN OF SOUTHWEST RANCHES AND ANDREW BERNS, FOR THE POSITION OF TOWN ADMINISTRATOR; AUTHORIZING THE MAYOR, AND TOWN ATTORNEY TO ENTER INTO THE AGREEMENT; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, on May 24, 2012, pursuant to Resolution No. 2012-052, the Town Council approved an Agreement with Andrew Berns for the position of Town Administrator; and

WHEREAS, on January 13, 2014, pursuant to Resolution No. 2014-023, the Town Council amended the Agreement to increase Andrew Berns salary, to enable the carryover of personal time off days, and to add three extra personal time off days, solely for 2014; and

WHEREAS, on January 22, 2015, pursuant to Resolution No. 2015-021, the Town Council amended to agreement to extend the contract for two additional years, to increase the base salary to \$155,000 retroactive to January 1, 2015, with the proviso that if he resigns prior to June 30, 2018, that the \$10,000 salary increase would be repaid to the Town, and to increase the Town's retirement contribution to seven percent (7%); and

WHEREAS, on January 28, 2016, the Town Council conducted Andrew Berns' performance review and agreed to extend Andrew Berns' contract through December 31, 2020, to increase Andrew Berns salary to \$160,000 annually, with the proviso that if he resigns prior to December 31, 2020, that he would pay back to the Town \$15,000 per year from January 1, 2016 through December 31, 2020, less any proration thereof, and \$10,000 for 2015, to increase the number of PTO days to 25 days with a 10 day rollover, with the proviso that should he resign the PTO payout would only be based on a maximum of 20 days, to increase his termination severance benefit to 12 weeks, plus one additional week commencing in 2016 for every year that Andrew Berns works for the Town, for a maximum of 16 weeks, and to provide a one-time 5% bonus.

WHEREAS, this Resolution, as directed by the Town Council, seeks to memorialize the Town Council's motion.

NOW, THEREFORE, BE IT RESOLVED by the Town Council of the Town of Southwest Ranches, Florida:

Section 1: The above referenced recitals are true and correct and are incorporated herein by reference.

Section 2: The Town Council hereby amends Resolution Nos. 2012-052 and 2014-023, and approves the Third Modification to the Agreement between the Town of Southwest Ranches and Andrew Berns for the position of Town Administrator, in substantially the same form as that attached hereto as Exhibit "A".

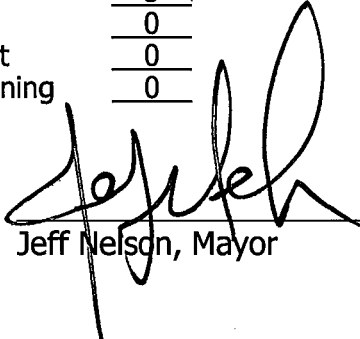
Section 3: The Town Council hereby authorizes the Mayor, Town Administrator and Town Attorney to enter into the Third Modification in substantially the same form as that attached hereto as Exhibit "A" and to make such modifications, additions and/or deletions which they deem necessary to effectuate the intent of this Resolution.

Section 4: This Resolution shall become effective immediately upon its adoption.

PASSED AND ADOPTED by the Town Council of the Town of Southwest Ranches, Florida, this 28th day of January, 2016, on a motion by Council Member Fisikelli and seconded by Vice Mayor McKay.

Nelson	<u>Yes</u>
Fisikelli	<u>Yes</u>
Breitkreuz	<u>Yes</u>
McKay	<u>Yes</u>
Jablonski	<u>Yes</u>

Ayes	<u>5</u>
Nays	<u>0</u>
Absent	<u>0</u>
Abstaining	<u>0</u>



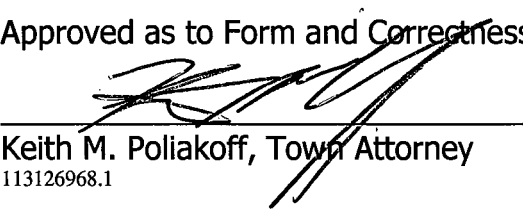
Jeff Nelson, Mayor

ATTEST:



Russell Muñiz, Assistant Town Administrator/Town Clerk

Approved as to Form and Correctness:



Keith M. Poliakoff, Town Attorney
113126968.1

THIRD AMENDMENT
TO THE AGREEMENT BY AND BETWEEN
THE TOWN OF SOUTHWEST RANCHES, FLORIDA, AND
ANDREW BERNS, FOR THE POSITION OF
TOWN ADMINISTRATOR

THIS THIRD AMENDMENT is made and entered into this 28th day of January, 2016 by and between the Town of Southwest Ranches, a Florida municipal corporation created and existing under the laws of the State of Florida, (hereinafter referred to as "Town") and Andrew Berns, an individual, (hereinafter referred to as "Town Administrator"), for the position of Town Administrator.

WITNESSETH:

WHEREAS, on May 24, 2012, pursuant to Resolution No. 2012-052, the Town Council approved an Agreement with Andrew Berns for the position of Town Administrator; and

WHEREAS, on January 13, 2014, pursuant to Resolution No. 2014-023, the Town Council amended the Agreement to increase the Town Administrator's salary to \$145,000 annually commencing January 1, 2014, to enable the carryover of up to ten (10) paid time off days to the next calendar year with Town Council approval, and to provide an additional three (3) paid time off days for calendar year 2014; and

WHEREAS, on January 22, 2015, the Town Council conducted Andrew Berns' performance review and agreed to extend Andrew Berns' contract for two additional years, to increase his base salary by \$10,000 retroactive to January 1, 2015, with the proviso that if he leaves prior to June 30, 2018, that the salary increase would be repaid to the Town, and to increase the Town's retirement contribution to seven percent (7%); and

WHEREAS, on January 22, 2015, pursuant to Resolution No. 2015-021, the Town Council amended to agreement to extend the contract for two additional years, to increase the base salary to \$155,000 retroactive to January 1, 2015, with the proviso that if he resigns prior to June 30, 2018, that the \$10,000 salary increase would be repaid to the Town, and to increase the Town's retirement contribution to seven percent (7%); and

WHEREAS, on January 28, 2016, the Town Council conducted Andrew Berns' performance review and agreed to extend Andrew Berns' contract through December 31, 2020, to increase Andrew Berns salary to \$160,000 annually, with the proviso that if

he resigns prior to December 31, 2020, that he would pay back to the Town \$15,000 per year from January 1, 2016 through December 31, 2020, less any proration thereof, and \$10,000 for 2015, to increase the number of PTO days to 25 days with a 10 day rollover, with the proviso that should he resign the PTO payout would only be based on a maximum of 20 days, to increase his termination severance benefit to 12 weeks, plus one additional week commencing in 2016 for every year that Andrew Berns works for the Town, for a maximum of 16 weeks, and to provide a one-time 5% bonus.

WHEREAS, this Third Amendment to the Agreement seeks to codify the agreement reached between Andy Berns and the Town Council; and

WHEREAS, the Agreement, the First Amendment to the Agreement, the Second Amendment to the Agreement, and the Third Amendment to the Agreement are hereinafter collectively referred to as the "Agreement";

NOW, THEREFORE, in consideration of the sum hereinafter set forth and for other good and valuable consideration, the receipt and legal sufficiency of which is hereby acknowledged, it is agreed as follows:

1. The above recitals are true and correct and incorporated herein.
2. Section 2 "Term", shall be amended as follows:

A) Town Administrator shall serve as Town Administrator commencing on June 4, 2012 (the "Effective Date") through ~~June 30, 2019~~ December 31, 2020. At the end of the term the Town Council and the Town Administrator shall meet and confer concerning an additional term, which shall require four (4) affirmative votes of the Town Council. If an additional term is not approved by either party, the parties may elect, via a majority vote of the Town Council and approval by the Town Administrator, to allow Town Administrator to remain in office until his successor has been appointed by the Town Council, at Town Administrator's then current salary including the benefits contained herein.

3. Section 3 "Salary", shall be amended as follows:

Commencing on January 1, ~~2015~~ 2016, Town agrees to increase Town Administrator's annual salary, for his services rendered hereto, from ~~One Hundred and Forty Five Thousand Dollars (\$145,000.00)~~ One Hundred and Fifty Five Thousand Dollars (\$155,000.00) to One Hundred and Sixty Thousand Dollars (\$160,000.00), with the proviso that if Town Administrator leaves prior to ~~June 30, 2018~~ December 31, 2020, that the prorated portion of the additional ~~Ten Thousand Dollar (\$10,000.00)~~

Fifteen Thousand Dollar (\$15,000.00) annual increase and Ten Thousand Dollars for 2015 shall be repaid to the Town within thirty (30) days of Town Administrator's departure from the Town. The Town, in its sole discretion, may apply Town Administrator's final payment against any funds that may be owed to the Town. Town Administrator's compensation shall be payable in accordance with the Town's employee regular payment schedule. Town may, at its own option, increase the base salary and/or benefits of the Town Administrator in such amounts and to such extent as the Council may determine that is desirable to do so based upon the Town Administrator's Annual Performance Review, set forth in Section 16 of this Agreement, upon a super majority vote of the Town Council. In addition to reviewing the Town Administrator's performance, the Council may also consider adjustments to the Administrator's salary based on the cost of living index by a simple majority vote of the Town Council. In the event the Town Council chooses to reduce Administrator's salary below the starting salary level of One Hundred and Twenty Five Thousand Dollars (\$125,000.00), and in the event Administrator does not agree to such reduction, said reduction shall be considered a termination by the Town as specified in Section 4(A) below.

In addition to the aforementioned, Town agrees to contribute seven percent (7%) of Town Administrator's annual salary to Town Administrator's ICMA retirement account.

4. Section 4 "Termination and Severance Pay", shall be amended as follows:

.....

3. If the Town Administrator is terminated on or after the seven hundred and thirty first (731st) day of employment Town Administrator shall receive a Severance Benefit equal to ~~four (4)~~ twelve (12) weeks, plus one additional week commencing in 2016 for every year that Town Administrator works for the Town for a maximum of sixteen (16) weeks, of the Town Administrator's then current salary, and Town Administrator shall be paid for any accrued paid time off days up to a maximum of 20 days based on Administrator's then current salary to be calculated as a per diem basis, to be paid within ten (10) business days of termination.

5. Section 8 "Annual Paid Time Off", shall be amended as follows:

~~Prior to accepting a position with the Town, Town Administrator scheduled a vacation on September 4, 2012 to September 11, 2012. This vacation shall not be counted against Town Administrator's annual paid time off days delineated herein. No more than ten (10) paid annual paid time off days shall be taken prior to December 31, 2012. Thereafter, Town Administrator may take twenty (20) twenty-five (25) annual paid time off days per calendar year. Annual paid time off shall be calculated and awarded commencing on January 1 each year and terminating on December 31. The Town shall compensate Town Administrator for all accrued annual paid time off days not utilized at the end of the calendar year by January 30th of the following calendar year based upon the per diem rate of the Town Administrator's then current salary. ~~Alternatively, and subject to the Town Council's approval, a~~ A maximum of five (5) ~~ten (10)~~ annual paid time off days may be carried over by the Town Administrator to the next calendar year. Any further carry over shall be subject to Town Council approval. Annual paid time off shall include sick, personal, and vacation days. Any days missed in excess of the annual paid time off days specified herein may be taken without compensation, subject to the approval of the Town Council. Town Administrator agrees to give the Town reasonable notice prior to any planned vacations.~~

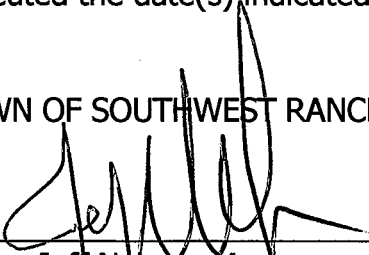
6. All other Sections remained unchanged shall remain in full force and effect.

[Signatures on Following Page]

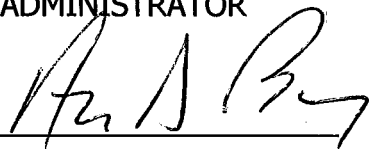
THIRD AMENDMENT TO THE AGREEMENT BY AND BETWEEN THE TOWN OF
SOUTHWEST RANCHES, FLORIDA, AND ANDREW BERNS FOR THE POSITION OF
TOWN ADMINISTRATOR

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed the date(s) indicated above.

TOWN OF SOUTHWEST RANCHES

By: 
Jeff Nelson, Mayor

TOWN ADMINISTRATOR

By: 
Andrew Berns

Approved as to Form and Correctness:


Keith M. Poliakoff, Town Attorney
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